

Martin, Molly

From: Scott Valor <svalor@santamonica.org>
Sent: Tuesday, July 01, 2014 9:37 AM
To: Ziegler, Sam; Martin, Molly
Subject: RE: Response to Administrator Gina McCarthy, RE: SIERRA CLUB EXCLUDED FROM SANTA MONICA BAY NEP SITE VISIT

Sam, Molly:

Does this now require yet another response from your end, or was your initial response sufficient? I hope the latter, but if the former I have a few quick responses and insights if you want to hear them.

For example, the notion that the 1989 agreement to do the CCMP is somehow a contract that requires funding be placed in a state account is an unrealistic and novel interpretation of that document, among other things. This is the same person who, for example, touts "Public Law 780" which is a 1954 Congressional budget authorization bill (pre-WRDA) that, among other things authorized funding for the dredging of Marina del Rey. Long since expired, he truly believes it has specific regulatory effect on activities in the marina today. Unfortunately, he has the time to run to various county board meetings (and our meetings) claiming that we are all "violating" Public Law 780.

He also continually turns a basic reading of law on its head believing that every action requires a law authorizing it, rather than the basic principle that, absent a prohibition on an activity, an activity is allowed to happen. This is why he frequently asks for a legal citation "authorizing" you/us to do various things. Again, no legal counsel, just a lot of time on his hands...

I think you get the idea, but let me know if you need rebuttal on specific items.

Scott

Scott Valor
Director of Government Affairs
Santa Monica Bay Restoration Commission
310-922-2376

www.smbrc.ca.gov

From: Ziegler, Sam <Ziegler.Sam@epa.gov>
Sent: Monday, June 30, 2014 15:04
To: Martin, Molly
Cc: Scott Valor
Subject: Fw: Response to Administrator Gina McCarthy, RE: SIERRA CLUB EXCLUDED FROM SANTA MONICA BAY NEP SITE VISIT

FYI
Sam Ziegler
U.S. EPA Region 9
415-972-3399

From: jd@johnanthonydavis.com <jd@johnanthonydavis.com>

Sent: Monday, June 30, 2014 2:17:01 PM

To: Mccarthy, Gina

Cc: Best-Wong, Benita; Guangyu Wang; Konner, Thomas; Blumenfeld, Jared; Philip@Waterboards Wyels; Frances@Waterboards McChesney; Ziegler, Sam; Mcshane, John; Molly O'Brien; Hamilton Cloud; Cody.William@epamail.epa.gov

Subject: Response to Admininstrater Gina McCarthy, RE: SIERRA CLUB EXCLUDED FROM SANTA MONICA BAY NEP SITE VISIT

US EPA HQ

Att: Administrator Gina McCarthy

Cc: Sam Ziegler Region 9

Cc: OIG

Cc: Original List

Administrator McCarty,

Sam Ziegler, Project Manager for the Santa Monica Bay NEP in Region 9 provided the attached response to the Sierra Club on your behalf. The 2001 Review Guidance for NEPs is also attached.

The State of California did not notify stakeholders of the NEP site visit and did not publicly invite any stakeholder.

The U.S. EPA did not notify stakeholders of the NEP site visit and did not publicly invite any stakeholder.

Page 7 of the Guidance states that Stakeholders should be included in the Site Visit meeting's and have opportunities to to view on-the-ground projects.

Here, Mr. Ziegler did not explain why U.S. EPA disregarded this provision, even after several stakeholder groups requested, in a timely manner, to participate. As a direct result, stakeholders were excluded from participation. While it is understood that the guidance uses the term, "should", that means a reasonable effort should be made to include stakeholder participation, yet no public effort was made by the State or EPA in that regard.

Regarding Contract No. 68-03-3319 between the U.S. EPA and State of California dated March 31, 1989, it is the State of California that is to receive grants from U.S. EPA for the Santa Monica Bay NEP and to then manage and distribute those public funds.

Here, a single employee of the State of California has signed applications for grants for years, along with entities of a private business. The grant applications have stated that a not for profit business, would act as the, "**fiscal agent**", for the State. The Sierra Club is not aware of any provision of the grant that speaks to a "fiscal agent" or defines that term or purpose.

There is clearly no provision of law in the State of California that permits a single employee of a State Agency, such as the Santa Monica Bay Restoration Commission, to allow the use of such a "fiscal agent", to accept and maintain funds of the State. Furthermore, no employee of that Agency is authorized under law to allow EPA NEP grants to the State to be deposited directly into an account of a private business, such is the case here.

As a result, grants from U.S. EPA in regard to Section 320 of the Clean Water Act, are never provided to the State. Those federal funds are never formally controlled by the State, but are controlled exclusively by a private business.

Mr. Ziegler of Region 9, states that U.S. EPA is in conformance with the provision of Section 320. It is also clear that U.S. EPA may provide grants to not for profit businesses. However, in this case, the agreement for Contract No. 68-03-3319 is between the federal agency and the State of California, for the purpose of the NEP, and its provisions do not allow for a private business to initially receive and subsequently manage and control those funds.

Grant applications validate this issue demonstrating that the State of California has not received any grant money for the NEP in well over a decade nor has it controlled those grant funds.

The Club requests the Office of the Administrator to reply to this issue in regard to stakeholder participation in the site visit and funding of the Santa Monica Bay NEP.

On behalf of the Sierra Club,

John Davis
PO 10152
Marina del Rey Ca. 90295

----- Original Message -----

Subject: RE: SIERRA CLUB EXCLUDED FROM SANTA MONICA BAY NEP SITE VISIT

From: <jd@johnanthonydavis.com>

Date: Thu, June 05, 2014 3:56 pm

To: mccarthy.gina@epa.gov

Cc: best-wong.benita@epa.gov, "Guangyu Wang" <GWANG@waterboards.ca.gov>, "Thomas Konner" <Konner.Thomas@epa.gov>, blumenfeld.jared@epa.gov, "Philip@Waterboards Wyels" <Philip.Wyels@waterboards.ca.gov>, "Frances@Waterboards McChesney" <Frances.McChesney@waterboards.ca.gov>, "Ziegler, Sam" <Ziegler.Sam@epa.gov>, mcshane.john@epa.gov, "Molly O'Brien" <Molly_O'Brien@feinstein.senate.gov>, "Hamilton Cloud" <Hamilton.Cloud@mail.house.gov>

U.S. EPA HEADQUARTERS

Att: Gina McCarthy, Administrator

Re: SIERRA CLUB EXCLUDED AS STAKEHOLDER RE: NEP REVIEW

Dear Administrator McCarthy,

Please see the attached letter from the Sierra Club.

We request your assistance in participating as a stakeholder in the NEP Review of the Santa Monica Bay Restoration Project.

The Final Guidance for NEP Review is not being followed by your staff.

Please help us in our attempt to participate.

Thank you,

On behalf of the Sierra Club,

John Davis
PO 10152
Marina del Rey Ca. 90291

----- Original Message -----

Subject: RE: SIERRA CLUB EXCLUDED FROM SANTA MONICA BAY NEP SITE VISIT

From: "Ziegler, Sam" <Ziegler.Sam@epa.gov>

Date: Thu, June 05, 2014 12:12 pm

To: "jd@johnanthonydavis.com" <jd@johnanthonydavis.com>

Cc: "Diamond, Jane" <Diamond.Jane@epa.gov>

Dear Mr. Davis:

We appreciate your interest regarding the Santa Monica Bay Restoration Program (SMBRP). As you know, next week EPA is conducting a site visit as part of a National Estuary Program (NEP) evaluation. These evaluations are conducted every five years consistent with the NEP Program Evaluation Guidance (August 31, 2011) as previously provided. The primary purpose of the evaluation is to determine whether adequate progress is being made implementing the Comprehensive Conservation and Management Plans to therefore merit continued funding under §320 of the Clean Water Act. We have worked closely with the SMBRP to arrange the site visit to address the purpose of the program evaluation. At this time we are unable to arrange additional meetings. We are familiar with the comments you have previously provided concerning SMBRP and they will be considered during the evaluation process.

Sincerely, Sam Ziegler

----- Original Message -----

Subject: SIERRA CLUB EXCLUDED FROM SANTA MONICA BAY NEP SITE VISIT

From: <jd@johnanthonydavis.com>

Date: Wed, June 04, 2014 2:01 pm

To: "Ziegler, Sam" <Ziegler.Sam@epa.gov>

Cc: mccarthy.gina@epa.gov, best-wong.benita@epa.gov, "Guangyu Wang" <GWANG@waterboards.ca.gov>, "Thomas Konner" <Konner.Thomas@epa.gov>, blumenfeld.jared@epa.gov, "Philip@Waterboards Wyels" <Philip.Wyels@waterboards.ca.gov>, "Frances@Waterboards McChesney" <Frances.McChesney@waterboards.ca.gov>

US EPA

Region 9

Att: Sam Ziegler NEP Program Manager Santa Monica Bay Los Angeles Ca.

Cc: US EPA Administrator Gina McCarthy

Cc: Benita Best-Wong HQ

Cc: Jared Blumenfeld Administrator Region 9

Cc: G. Wang Acting Executive Director Santa Monica Bay Restoration Commission

Dear Mr. Ziegler,

We understand that a review team from headquarters will be conducting the five-year review of the Santa Monica Bay Restoration Project next week in Los Angeles California.

Respectfully, the Program Evaluation Guidance provided by Region 9, SECTION D specifies the ON-SITE VISIT is to INCLUDE STAKEHOLDERS.

In this matter the SIERRA CLUB is a STAKEHOLDER. Unfortunately, neither the US EPA nor the State Santa Monica Bay Restoration Commission had notified or invited stakeholders such as the Club, so they may fully participate in the review and site visit. Stakeholder input is vital to an adequate review.

The Sierra Clubs involvement in the Santa Monica Bay NEP is well documented by our continued attendance at the meetings of the Santa Monica Bay Restoration Commission.

Furthermore, the Sierra Club and other stakeholder groups have a lengthy history of work that facilitated the acquisition of the Ballona Wetlands Ecological Reserve by the State of California. We have been participatory in projects at the Malibu Lagoon and the bay in general.

You mentioned there is no legal requirement to include a public notice or for public participation in the site review. However, the guidance does call for this important component, which represents a good faith effort by the EPA and the State to engage stakeholders.

The Club wants to be assured that our written comments will be included as part of the formal review process.

You are offering a potential stakeholder outside the review process. While the Club welcomes this opportunity, having such a meeting is no substitute for participation by stakeholders attending the site-visit, and in fact, is not reflected in the guidance at all.

Therefore, the Sierra Club, as a stakeholder, would like to fully and meaningfully participate in the site visit, with other stakeholders.

Please respond as soon as possible to the Sierra Club providing the time and place the site visit will take place. Or, please explain why the Sierra Club is being excluded from the site-visit.

The Club is deeply involved in this NEP at the Ballona Wetlands and Malibu, and deserves to have a voice in the process, as do all other stakeholders.

Please review the text of the email to Thomas Konner of Region 9 below that lists some of the issues the Sierra Club would like to provide to reviewers as part of the EPA review process.

John Davis

PO 10152 Marina del Rey Ca. 90295

John Davis
PO 10152
Marina del Rey Ca. 90295

Hi Mr. Konner,

Thanks for responding. I would like to have the contact at HQ, in addition to Region 9. My understanding is that staff from HQ will be present and I would like to speak to them in advance of the meeting, not only the Region 9 program manager.

This is because major problems have been identified relating to Region 9 management of the program, including grants being provided to a non-profit business, and never reaching the State. The Administrator and the California Governor entered into contract No. 68-03-3319 on March 31, 1989.

The current NEP is a continuation of that agreement. It established governance of the NEP, which has been changed by the State and without formal authorization by EPA.

Another issue is that according to a FOIA response, the Administrator has never extended a management conference for the Santa Monica Bay NEP nor has it reconvened a management conference.

However, all of the grants have gone to a private business leaving the State of California with no formal control over the funds and how they are spent for over a decade.

The non-profit is named the Santa Monica Bay Restoration Foundation. That business reports the grant funds as revenues of the private business.

Below is the FOIA response and the attach-met is included in this email.

Therefore, it is important to speak to the review team from HQ as well as Region 9.

Thank you for your kind assistance,

John Davis
PO 10152
Marina del Rey Ca. 90295

From:<jd@johnanthonydavis.com>(Remove Preferred Sender)

Date:Fri, May 30, 2014 1:52 pm

To:"Konner, Thomas" <Konner.Thomas@epa.gov>

Hi Mr. Konner,

Thanks for responding. I would like to have the contact at HQ, in addition to Region 9. My understanding is that staff from HQ will be present and I would like to speak to them in

advance of the meeting, not only the Region 9 program manager.

This is because major problems have been identified relating to Region 9 management of the program, including grants being provided to a non-profit business, and never reaching the State. The Administrator and the California Governor entered into contract No. 68-03-3319 on March 31, 1989.

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Below is the FOIA response and the attach-met is included in this email.

Therefore, it is important to speak to the review team from HQ as well as Region 9.

Thank you for your kind assistance,

John Davis
PO 10152
Marina del Rey Ca. 90295

----- Original Message -----

Subject: RE: NEP Program Evaluation Team Mtg

From: "Ziegler, Sam" <Ziegler.Sam@epa.gov>

Date: Mon, June 02, 2014 3:02 pm

To: "jd@johnanthonydavis.com" <jd@johnanthonydavis.com>

Hi Mr. Davis:

As we discussed earlier today attached is guidance concerning the EPA NEP Program review process. I am also discussing with those involved if there is any opening in the schedule for next week's site visit to meet with you and a few other interested community representatives as you suggested. Thanks! Sam

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United States Environmental Protection Agency

Sam Ziegler, Chief  
Watersheds Office (WTR-3)  
U.S. EPA Region 9, Water Division  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 972-3399 (phone)  
(415) 947-3537 (fax)  
[ziegler.sam@epa.gov](mailto:ziegler.sam@epa.gov) (email)  
See Region 9 watershed priorities at <http://www.epa.gov/region09/water/watershed/index.html>

***Mission:** The Watersheds Office strives to restore polluted waters and protect aquatic ecosystems. We work broadly, emphasize collaboration and focus on specific watersheds. Programmatic responsibilities include the nonpoint source and national estuary programs. We utilize these and other EPA regulatory and non-regulatory programs, along with external partnerships to protect ecosystems and human health. We have responsibility for tracking TMDL implementation and EPA performance measures to target activities for results, highlight water quality improvements and demonstrate the watershed approach.*

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**From:** Konner, Thomas  
**Sent:** Friday, May 30, 2014 11:59 AM  
**To:** [jd@johnanthonydavis.com](mailto:jd@johnanthonydavis.com)  
**Cc:** Ziegler, Sam  
**Subject:** NEP Program Evaluation Team Mtg

Hello John,

Sam Ziegler is the manager of the EPA Region 9 National Estuary Program work. He should be able to respond to your inquiries. Sam is not in the office today but I believe he will be here on Monday. I have copied him on this email. His phone is 415-972-3399.

We appreciate your interest in protecting the environment,

Respectfully,

Tom Konner  
Environmental Engineer  
U.S. EPA WTR-4  
75 Hawthorne St.  
San Francisco, CA 94105  
415-972-3408